

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 19, 2021

1:04 p.m.

**MEMBERS PRESENT**

Representative Josiah Patkotak, Chair  
Representative Grier Hopkins, Vice Chair  
Representative Zack Fields  
Representative Calvin Schrage  
Representative Sara Hannan  
Representative Mike Cronk  
Representative Ronald Gillham

**MEMBERS ABSENT**

Representative George Rauscher  
Representative Tom McKay

**COMMITTEE CALENDAR**

HOUSE BILL NO. 115

"An Act relating to aquatic farming and hatchery site leases; and requiring the director of the division of lands to provide the legislature with an annual report relating to aquatic farming and hatchery site leases."

- HEARD & HELD

HOUSE BILL NO. 81

"An Act authorizing the commissioner of natural resources to modify a net profit share lease."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 115

SHORT TITLE: AQUATIC FARMING & HATCHERY SITE LEASES

SPONSOR(S): REPRESENTATIVE(S) STORY

02/24/21	(H)	READ THE FIRST TIME - REFERRALS
02/24/21	(H)	FSH, RES
03/04/21	(H)	FSH AT 11:00 AM GRUENBERG 120
03/04/21	(H)	Heard & Held
03/04/21	(H)	MINUTE(FSH)

03/09/21	(H)	FSH AT 11:00 AM GRUENBERG 120	
03/09/21	(H)	Moved HB 115 Out of Committee	
03/09/21	(H)	MINUTE(FSH)	
03/10/21	(H)	FSH RPT 7DP	
03/10/21	(H)	DP: VANCE, STUTES, STORY, MCCABE,	
		KREISS-TOMKINS, ORTIZ, TARR	
03/19/21	(H)	RES AT 1:00 PM BARNES 124	

BILL: HB 81

SHORT TITLE: OIL/GAS LEASE:DNR MODIFY NET PROFIT SHARE  
 SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	RES, FIN
03/05/21	(H)	RES AT 1:00 PM BARNES 124
03/05/21	(H)	Heard & Held
03/05/21	(H)	MINUTE(RES)
03/10/21	(H)	RES AT 1:00 PM BARNES 124
03/10/21	(H)	Heard & Held
03/10/21	(H)	MINUTE(RES)
03/17/21	(H)	RES AT 1:00 PM BARNES 124
03/17/21	(H)	Heard & Held
03/17/21	(H)	MINUTE(RES)
03/19/21	(H)	RES AT 1:00 PM BARNES 124

# **WITNESS REGISTER**

REPRESENTATIVE ANDI STORY  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, presented HB 115.

GREG SMITH, Staff  
 Representative Andi Story  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** On behalf of prime sponsor Representative Story, presented the Sectional Analysis on HB 115.

CHRISTY COLLES, Division Operations Manager  
 Division of Mining Land and Water  
 Department of Natural Resources  
 Anchorage, Alaska

**POSITION STATEMENT:** Provided information and answered questions during the hearing on HB 115.

HEATHER MCCARTY, Chair

Mariculture Task Force  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 115.

ERIC WYATT, President  
Alaska Shellfish Growers Association  
Craig, Alaska

**POSITION STATEMENT:** Testified in support of HB 115.

RYAN FITZPATRICK, Commercial Analyst  
Department of Natural Resources  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information and answered questions during the hearing on HB 81.

#### **ACTION NARRATIVE**

[1:04:21 PM](#)

**CHAIR JOSIAH PATKOTAK** called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives Fields, Hopkins, Schrage, Hannan, Gilham, Cronk, and Patkotak were present at the call to order.

#### **HB 115-AQUATIC FARMING & HATCHERY SITE LEASES**

[1:05:31 PM](#)

CHAIR PATKOTAK announced that the first order of business would be HOUSE BILL NO. 115 "An Act relating to aquatic farming and hatchery site leases; and requiring the director of the division of lands to provide the legislature with an annual report relating to aquatic farming and hatchery site leases."

[1:05:36 PM](#)

REPRESENTATIVE ANDI STORY, Alaska State Legislature, as prime sponsor, presented the sponsor statement for HB 115, which read as follows [original punctuation provided]:

House Bill 115 simplifies the Department of Natural Resources (DNR) lease renewal process for aquatic farms to support Alaska's aquaculture sector while reducing administrative overhead. Examples of aquatic farm products include oysters, kelp, and other shellfish. HB115 makes the aquatic farm lease renewal process consistent with the renewal process for other

DNR leases such as agricultural grazing, cabins and lodges, fish processing docks, and hydroelectric facilities. HB 115 does not affect salmon hatchery leases.

If enacted, HB115 would expedite the lease renewal process lowering the risk for businesses investment and reducing the workload of an overstretched state agency.

Current statute requires DNR to approve both initial and renewal aquatic farm leases using the same process, called a "945 authorization" (referring to the adjudication process found in AS 38.05.945), which takes around 200 days. HB115 would allow aquatic farm or hatchery renewals to be renewed in the same manner as most DNR leases like those listed above. This optional process allows the Director of the Division of Mining, Land and Water to renew a lease for a business in good standing and takes around 90 days. Applied to aquatic businesses, this option significantly shortens the renewal process while continuing appropriate regulatory oversight and public engagement.

HB115 also requires DNR to submit an initial report on the backlog of pending aquatic farm and hatchery site lease applications, estimate economic impacts of pending leases, and provide recommendations for streamlining the lease approval process. Subsequent annual reports would detail the application backlog and list the number of leases renewals that underwent the time-intensive lease renewal process.

This bill makes clear ecotourism and educational use of sites is allowed, and explicitly prohibits DNR from charging additional fees for persons using, or traversing, land leased for aquatic farms and hatchery sites.

REPRESENTATIVE STORY noted that this legislation was heard in the Thirty-First Alaska State Legislature, and while in the Senate Finance Committee, a few changes had been made which have been incorporated in HB 115.

[1:10:15 PM](#)

GREG SMITH, Staff, Representative Andi Story, Alaska State Legislature, on behalf of Representative Story, detailed the Sectional Analysis on HB 115, which read as follows [original punctuation provided]:

Section 1: Amends AS 38.05.035(a) to require the Director of the Division of Mining, Land, and Water to submit an annual report to the legislature, primarily detailing aquatic farm and hatchery site leases pending with the department.

Section 2: Amends AS 38.05.070(e) by adding AS 38.05.083 (aquatic farm leasing statute) to the general leasing renewal section of law. This change allows the director to renew an aquatic farm lease under general lease renewal procedure.

- A technical amendment on lines 20-21 specifies which types of leases may be renewed under this procedure.

Section 3: Amends AS 38.050.083(a) by deleting the term "or renew" from this section of statute. This removes the requirement that the renewal procedure for an aquatic farm or hatchery undergo the more detailed AS 38.05.945 adjudication process.

Section 4: Amends AS 38.050.083(b) by deleting the term "or renewal" from this section of statute. This removes the renewal procedure from the aquatic farm leasing statute.

Section 5: Adds new subsections to AS 38.050.083, including:

- (g): stating the Commissioner of the Department of Natural Resources may renew an aquatic farm lease under the general leasing renewal procedure;
- (h): explicitly states ecotourism and educational purposes are allowable uses for aquatic farming and hatchery sites; and
- (i): explicitly prohibits the charging of an additional fee to aquatic farming and hatchery sites for the use of, or passage, across these sites.

Section 6: Adds a new section to uncodified law to require Director of the Division of Mining, Land, and Water to submit an initial report to the legislature detailing aquatic farm and hatchery site leases

pending with the department, estimates of economic impact if all the leases were granted, and recommendations by DNR and other state agencies to streamline the lease approval process.

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REPRESENTATIVE FIELDS thanked Representative Story for introducing the bill and noted that he has heard from acquaintances regarding problems with the 10-year lease renewal. He asked why the bill is written to implement expedited renewal processes instead of changing to 25-year leases.

REPRESENTATIVE STORY answered that it would be helpful to hear from the department staff who would be testifying.

REPRESENTATIVE FIELDS responded that he would also like to learn about what happens in the case of something going wrong mid-lease.

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CHRISTY COLLES, Division Operations Manager, Division of Mining Land and Water, Department of Natural Resources, explained that currently the regulation is for a 10-year authorization, and any term longer than 10 years requires a survey for leases, and, in many cases, the lessees don't want to spend the money for a survey and appraisal. She said it would be possible to move to a longer authorization, but the statute affects all of the leases.

REPRESENTATIVE FIELDS followed up to ask whether it's feasible to extend the term of only the leases in question without harming the other 10-year leases, and to require the survey at a later date instead of at the beginning of the lease, so that the lessee can spread out the costs and make more money throughout the lease term.

MS. COLLES responded that she thinks it is possible. She explained that the benefit of this proposed legislation is allowing the farmers to have the certainty of a longer lease without having to go through the full process of preliminaries, public notice, and final notice. She noted that lessees have expressed that they would like the option of having a term of longer than 10 years.

REPRESENTATIVE FIELDS said that he would be interested in introducing an amendment to lengthen the initial lease term to 15 or 20 years, perhaps requiring a survey at year 10. He noted that these facilities are very capital-intensive and that it's reasonable to have a longer period to recoup the investment.

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REPRESENTATIVE HANNAN said that Alaska has had many mariculture leases, largely for shellfish, and the further north the area is the slower the shellfish grow, so it may be years before a farm has a commercially viable crop. She said that the new growth in the mariculture industry involves faster-growing crops like kelp, and that the department found that it couldn't process the new leases into commercial operation because it felt obligation to renew the leases of the existing operators; new operators couldn't enter the segment that's flourishing in the industry. She said that new operators could potentially conflict with other leases, in that allowing lease renewals is much easier than processing new leases.

REPRESENTATIVE STORY noted that when an operator is going through a lease renewal their application is queued with all the others, lengthening the process.

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CHAIR PATKOTAK observed that HB 115 would bring the mariculture industry to the same level playing field with the rest of the agricultural industry in Alaska.

[1:21:20 PM](#)

REPRESENTATIVE HOPKINS said that even in Fairbanks there are many Alaska-grown mariculture products and that he appreciates the proposed bill.

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REPRESENTATIVE FIELDS asked whether 10 years is the best timeframe or if extending the lease term would have more benefits.

MS. COLLES replied that agricultural leases can go up to 55 years, but aquatic farms are at 10 years based on regulations in place. She said that regulations can be changed, and if the department could find a statutory change that would allow

consideration of a longer-term lease, they might allow a lease term beyond 10 years.

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REPRESENTATIVE GILLHAM followed up on Representative Fields' question and said that by the time an oyster crop is grown and ready for market it could be 8 to 10 years, then they would need to start all over. He said that for seaweed a 10-year lease is appropriate, but for shellfish, it's too short.

1:24:05 PM

REPRESENTATIVE FIELDS said that he had heard, anecdotally, that growing seaweed and oysters side-by-side benefits water quality, and asked why that wouldn't be wanted.

REPRESENTATIVE STORY said that she would defer to the department for that question.

MS. COLLES responded that the question would be appropriately directed to the Department of Fish and Game, but that she is of the same understanding as Representative Fields.

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HEATHER MCCARTY, Chair, Mariculture Task Force, testified in support of HB 115. She gave a brief overview of the purpose of the Mariculture Task Force, noting that it was created in 2016 to represent several entities with interest in mariculture development; one of the task force's first tasks was to identify priorities which would move mariculture development forward. She said that the task force focused on identifying regulatory areas which needed to be addressed; the Department of Natural Resources' (DNR's) lease process is one area which needed improvement. She said that she believes there was a two-year backlog of requests, which has gotten better; the issue addressed in this bill was also identified by the task force. She said that the renewal process doesn't need to take as long as the initial lease. She then said, regarding the ecotourism sites, that allowing that activity would significantly benefit those operators.

1:29:36 PM

ERIC WYATT, President, Alaska Shellfish Growers Association, testified in support of HB 115. He identified himself as an



active farmer of more than 10 years and said that it's very encouraging to hear the comments that are supportive of mariculture. He said that he likes simple solutions to move the industry forward, and that the Alaska Shellfish Growers Association approves of this proposed bill, and he personally approves of it as well. He emphasized his approval of the ecotourism portion of HB 115.

[1:31:34 PM](#)

CHAIR PATKOTAK opened public testimony on HB 115. After ascertaining that no one wished to testify, he closed public testimony.

[1:32:05 PM](#)

REPRESENTATIVE STORY remarked that she believes HB 115 would have great potential for helping businesses and that she appreciates the support of the testifiers.

REPRESENTATIVE GILLHAM asked for a definition of maritourism or aquatourism.

MR. SMITH answered that maritourism is commonly the practice of people visiting the shellfish farm, seeing the floats or docks, tasting the products, and learning about the process.

REPRESENTATIVE GILLHAM described his experience visiting an oyster farm in Prince William Sound, and he expressed his appreciation of HB 115.

REPRESENTATIVE HANNAN described her appreciation for mariculture, and she noted that there is a growing segment of travelers that want to be educated instead of just purchasing the product.

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REPRESENTATIVE HOPKINS related a personal experience of ecotourism.

REPRESENTATIVE CRONK noted that he supports the proposed bill and stated his support for helping private businesses.

REPRESENTATIVE STORY agreed that supporting this industry is important and thanked committee members for their comments.

[1:38:09 PM](#)

CHAIR PATKOTAK announced that HB 115 was held over.

**HB 81-OIL/GAS LEASE: DNR MODIFY NET PROFIT SHARE**

[1:38:50 PM](#)

CHAIR PATKOTAK announced that the final order of business would be HOUSE BILL NO. 81 "An Act authorizing the commissioner of natural resources to modify a net profit share lease."

[Before the committee was the proposed committee substitute (CS) for HB 81, Version 32-GH1706\B, Nauman, 3/16/21, ("Version B"), adopted as a working document during the House Resources Standing Committee meeting on 3/17/21, with Amendment 1 tabled and Amendment 2 left pending with an objection.]

CHAIR PATKOTAK briefly addressed the amendments that the Department of Natural Resources (DNR) worked on and invited Representative Hannan to speak about her amendment.

[1:39:53 PM](#)

REPRESENTATIVE HANNAN described Amendment 2, which read as follows:

Page 2, line 18, following "feasible":

Insert "a royalty modification may not be made under this subparagraph;"

Page 2, line 30:

Delete "or (1) (D)"

Page 4, line 5:

Delete "or net profit share"

Following "(1) (A)":

Insert "of this subsection or a net profit share reduction under (1) (A)"

REPRESENTATIVE HANNAN reviewed that Amendment 2 was about encouraging production and said that she believes it should be limited to affecting only the 26 net profit sharing leases (NPSLs) instead of opening it to the thousands of leases that have royalties, because every lease has a royalty component. She said that the committee has learned that operators with royalty-only leases have other ways of renegotiating the royalty

amount, but this bill was designed to get non-productive NPSLs into production. She said that the NPSLs could use the various avenues available in existing statute to evaluate renegotiation. She also noted that legislative oversight is required to change a lease agreement, and the Legislative Finance Division is most likely not prepared to provide oversight for thousands of royalty leases; however, oversight of 26 NPSLs is possible. She ended by summarizing that she supports changes that encourage NPSLs into production, but doesn't want to create a broad change that would allow thousands of royalty lease renegotiations in a given timeframe.

[1:42:10 PM](#)

CHAIR PATKOTAK invited Ryan Fitzpatrick to clarify any actionable changes that would be made by the Amendment 2.

[1:42:38 PM](#)

RYAN FITZPATRICK, Commercial Analyst, Department of Natural Resources, referred to the document "Changes in CS HB 81 Version I" [Version I was not moved for adoption until 3/22/21], which read as follows [original punctuation provided]:

Page 2 Lines 16 - 19

- Clarifies language in subsection D regarding circumstances in which capital expenditures are needed to extend the economic life of an oil or gas field or pool
- Specifies that subsection D only applies to net profit share lease modifications

MR. FITZPATRICK explained that Amendment 2 would restrict the scenario to the 26 NPSLs and modify only the net profit share component of the 26 leases, not necessarily the royalty component. He said that he believes that, from the perspective of DNR, the issue with modifying only the net profit share component is that it sufficiently incentivizes the lessee to make the capital expenditures necessary to get the lease productive again. He said that if it was possible to modify royalty in addition to net profit share, then the leaseholder might be sufficiently incentivized to make capital expenditures, thereby extending the life of the field or pool.

[1:45:21 PM](#)

REPRESENTATIVE HOPKINS stated that he supports Amendment 2 because of the title of the bill, which specifies **"to modify a net profit share lease."** He noted that the presentations have involved the 26 NPSLs, but they've had no presentations or opportunities to learn about the royalty-only leases. If the committee wants to address royalty modifications for the previously described "scenario D," he said, there should be another bill up for discussion. He opined that Amendment 2 is "absolutely critical" to limit the bill to the information already received, the title, and the intent of the bill.

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REPRESENTATIVE FIELDS stated that he supports HB 81 as it pertains to the NPSLs but not with impacts on royalties. He said that he supports Amendment 2 and cannot support the underlying bill without it or his "subsequent amendment to an amendment to make sure we are appropriately encouraging production and capital investment." He noted Representative Hopkins' comments regarding the text of the bill being consistent with the title.

[1:48:24 PM](#)

CHAIR PATKOTAK invited Mr. Fitzpatrick or Mr. Meza to provide any further comments before the committee votes.

MR. FITZPATRICK said that making a change in policy is the prerogative of the legislature, and noted that in the PowerPoint presentation (given by Mr. Meza during the House Resources Standing Committee meeting on March 5, 2021, and included in the committee packet), slides 21 and 23 were intended to convey that the newly proposed "scenario D" under HB 81 was to apply to both royalty modification and NPSL modification situations.

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CHAIR PATKOTAK asked for clarification on Amendment 2 with reference to the PowerPoint presentation, titled "HB 81 - DNR MODIFYING NET PROFIT SHARES ON OIL & GAS LEASES," and whether it would limit the authority of the DNR commissioner as outlined in item 1A on slide 21 of the PowerPoint presentation, which read as follows [original punctuation provided]:

1. Expand the royalty modification process to include NPSLs:

A. Commissioner would have the authority to modify net profit share rates in the same manner as royalty rates under AS 38.05.180(j).

- Objective is to encourage production of otherwise stranded resources.

MR. FITZPATRICK answered that he believes Amendment 2 would not impact that provision, but it would impact other proposed changes, as shown in item 2A on slide 21 of the PowerPoint presentation, which read as follows [original punctuation provided]:

2. Other changes:

A. Creates an additional qualifying scenario for modification of either royalty or NPSLs

- For producing pools, where incremental production requires incremental capital expenditures, which, in the absence of modification, would be uneconomic.

MR. FITZPATRICK explained that the intent of DNR was for the modification allowance to apply to both royalty and NPSLs.

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CHAIR PATKOTAK noted that Representative Rauscher had brought forth the original objection to Amendment 2 [on 3/17/21], for discussion purposes, but that Representative Rauscher's office approved of lifting his objection in his absence. There being no further objection, Amendment 2 was adopted.

[1:52:23 PM](#)

CHAIR PATKOTAK referred to the amendment from Representative Fields, and he and Representative Fields briefly discussed which amendments are about to be put forth.

[1:53:12 PM](#)

The committee took a brief at-ease.

[1:53:25 PM](#)

CHAIR PATKOTAK reminded committee members that on 3/17/21, the committee had tabled Amendment 1. He announced that Amendment 1 was before the committee. Amendment 1 read as follows:

Page 2, lines 17 - 18:

Delete "for which additional capital expenditures would make future production no longer"

Insert "from which, without additional capital expenditures, future production would no longer be"

[1:53:50 PM](#)

REPRESENTATIVE FIELDS moved to adopt Amendment 1 to Amendment 1, labeled 32-GH1706\B.3, Nauman, 3/18/21, which read as follows:

Page 2, lines 17 - 18:

Delete "for which additional capital expenditures would make future production no longer"

Insert "from which, without additional capital expenditures, future production would no longer be"

Page 3, following line 9:

Insert a new paragraph to read:

"(6) may not grant a royalty or net profit share modification for a field or pool under (1)(D) of this subsection unless

(A) the modification requires the lessee or lessees to make the capital expenditures necessary for production to be economically feasible; and

(B) the commissioner determines that the capital expenditures made under (A) of this paragraph are sufficient to maximize production from the field or pool;"

Page 3, line 10:

Delete "(6)"

Insert "(7)"

Page 3, line 16:

Delete "(7)"

Insert "(8)"

Page 4, line 3:

Delete "(8)"

Insert "(9)"

Page 4, line 28:

Delete "(9)"

Insert "(10)"

Page 5, line 2:

Delete "(10)"  
Insert "(11)"

Page 5, line 4:  
Delete "(9)"  
Insert "(10)"

Page 5, line 9:  
Delete "(11)"  
Insert "(12)"

Page 5, line 16:  
Delete "(12)"  
Insert "(13)"

Page 5, line 17:  
Delete "(9)"  
Insert "(10)"

Page 5, line 29:  
Delete "(9)"  
Insert "(10)"

Page 5, line 31:  
Delete "(13)"  
Insert "(14)"

[1:53:56 PM](#)

CHAIR PATKOTAK objected for discussion purposes.

[1:54:05 PM](#)

REPRESENTATIVE FIELDS thanked the collaborators for their assistance and described Amendment 1 to Amendment 1, which would ensure maximum production from the fields by ensuring that capital investments are made to prolong the lives of the fields. He said that if either capital investment or modified lease terms could extend the life of the field, then the capital investment should happen either before, or in conjunction with, modified lease terms, so that modified terms don't occur at the expense of capital investment.

[1:54:56 PM](#)

MR. FITZPATRICK explained that this amendment would specify that if capital expenditures are necessary to extend the life of the

field or pool and reduced lease terms are also allowed, then there would be a condition on the modification of the lease terms so that the capital expenditures must be made or else the modification would be rescinded. He described a specific case in which capital expenditures were not made, therefore the royalty modification lapsed, and he indicated that he believes DNR would support this amendment.

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CHAIR PATKOTAK removed his objection. There being no further objection, Amendment 1 to Amendment 1 was adopted. He then spoke to Amendment 1, as amended, and addressed Representative Hopkins' earlier objection to Amendment 1.

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REPRESENTATIVE HOPKINS withdrew his objection to Amendment 1, [as amended]. There being no further objection, Amendment 1, as amended, was adopted.

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REPRESENTATIVE HOPKINS indicated his thanks to DNR for helping bring this proposed legislation forward and expressed that he still has some concerns about the bill, but that he would like it to continue going forward in order to maximize production. He said that he wants to ensure that HB 81, as amended, wouldn't "make profitable production more profitable," but rather would bring fields that wouldn't otherwise be developed into production.

[HB 81 was held over.]

[2:02:51 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:03 p.m.